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10/560,475	06/05/2006	Dirk Muhlhoff	3081.150WOU'S	3180
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PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.			GREECE, JAMES R	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,475	Applicant(s) MUHLHOFF ET AL.
	Examiner JAMES R. GREECE	Art Unit 2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

- 1) Responsive to communication(s) filed on 13 October 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,8-17,35,36 and 42-61 is/are pending in the application.
 4a) Of the above claim(s) 35,36 and 42-52 is/are withdrawn from consideration.
 5) Claim(s) 1,2 and 8-17 is/are allowed.
 6) Claim(s) 53-58 and 60 is/are rejected.
 7) Claim(s) 59 and 61 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 12/12/2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-546)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 53-58, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Furness et al (US 5,659,327).

Re claim 53, Furness et al teaches A device for determining a position of an element of an eye, comprising: an illumination unit, which generates optical radiation during operation and emits it as an illumination ray bundle for illumination of at least one region on the element of the eye (see at least numeral 62 and col. 7, lines 43-55); a distance-determining unit, which senses, in a temporally resolved manner, the illumination ray bundle returned by the element of the eye as a detection ray bundle and generates a distance signal using the received optical radiation of the detection ray bundle, said distance signal corresponding to a distance of the element of the eye from a reference plane, which is defined relative to the distance-determining unit (see at least col. 8, lines 1-12); an evaluating unit which, using said distance signal, generates a position signal corresponding to the position of the element of the eye(see at least col. 8, lines 1-12), and illumination optics for focusing the illumination ray bundle for at least one wavelength in a predetermined range of possible positions of the element of the eye and wherein the distance-determining unit performs confocal imaging and comprises detection optics, a small-aperture stop arranged following said detection optics and located in a stop plane, and a detection unit

arranged following said aperture stop for detecting a part of the detection ray bundle having passed the small-aperture stop, wherein the stop plane is conjugated with an object plane associated with the wavelength, said object plane being located in a range of possible positions of the cornea (see at least col. 8, lines 1-26).

Re claim 54, Furness et al teaches wherein the position of the illumination and/or detection optics and/or of the aperture stop and/or the focal length of the illumination and/or detection optics and/or the position of the illuminated spot can be changed by means of a drive (see at least col. 8, lines 1-12).

Re claim 55, Furness et al teaches wherein optical radiation of different wavelengths can be emitted by the illumination unit, and ray bundle forming optics of the illumination unit, the illumination optics and/or the detection optics are dispersive by a predetermined degree (see at least col. 7, lines 43-55).

Re claim 56, Furness et al teaches wherein the illumination unit emits optical radiation in at least two different spectral ranges (see at least col. 7, lines 43-55).

Re claim 57, Furness et al teaches wherein the illumination unit comprises a source of radiation for emitting optical radiation in a predetermined spectral range (see at least col. 7, lines 43-55).

Re claim 58, Furness et al teaches wherein the detection unit detects the part of the detection ray bundle having passed the small-aperture stop spectrally and temporally resolved (see at least col. 8, lines 1-12).

Re claim 60, Furness et al teaches wherein the illumination optics and the detection optics share a common objective (see at least figure 2).

Allowable Subject Matter

3. Claims 1-2 & 8-17 are allowed.
4. Claims 59 and 61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:
The prior art taken singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claims, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper.

Detailed reasons for allowable subject matter for claim 1 can be found in the applicant's remarks dated 10/13/2009 on page 14, lines 17-22 through page 15, lines 1-9.

In regard to dependent claim 59, the prior art taken either singly or in combination fails to anticipate or fairly suggest the detection unit detects the part of the detection ray bundle having passed the small aperture stop in a manner timed with the change of the spectral ranges of the illumination ray bundles; recited together in combination with the totality of particular features/limitations recited therein.

In regard to dependent claim 61, the prior art taken either singly or in combination fails to anticipate or fairly suggest the particular numerical limitation as disclosed; recited together in combination with the totality of particular features/limitations recited therein

Response to Arguments

6. Applicant's remarks regarding claims 1-2 & 8-17 were persuasive and therefore the rejection of record was withdrawn in favor of allowability. New claims 53-58, and 60 stand rejected under a new prior art reference.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES R. GREECE whose telephone number is (571)272-3711. The examiner can normally be reached on M-Th 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James R Greece/
Examiner, Art Unit 2873
1/15/2010

/Ricky L. Mack/
Supervisory Patent Examiner, Art Unit 2873